

UNITED STATES BANKRUPTCY COURT
DISTRICT OF OREGON

In re) Case No. _____
)
) NOTICE OF **PRELIMINARY**
) HEARING ON MOTION
) FOR USE OF CASH COLLATERAL
) TO OBTAIN CREDIT
Debtor(s)) (Check One)

YOU ARE NOTIFIED THAT:

1. The undersigned moving party, _____, filed a Motion For Use of Cash Collateral To Obtain Credit (*check one*). A copy of the motion is attached; and it includes BOTH (i) the statement required by [Local Form #541.7](#), and (ii) the following allegations:

a. The immediate and irreparable harm that will come to the estate pending a final hearing is _____.

b. The amount of cash collateral credit (*check one*) necessary to avoid the harm detailed above prior to the final hearing is _____.

2. The name and service address of the moving party's attorney (or moving party, if no attorney) are: _____.

3. A **PRELIMINARY** HEARING on the motion WILL BE HELD ON _____ AT _____
~~IN~~ _____.

Testimony will be received if offered and admissible.

4. If you WISH TO OBJECT to the motion, YOU MUST DO ONE OR BOTH OF THE FOLLOWING: (1) ATTEND the preliminary hearing; AND/OR (2) FILE with the Clerk of Court (i.e., if the 5-digit portion of the Case No. begins with "3" or "4", mail to 1001 SW 5th Ave. #700, Portland OR 97204; OR if it begins with "6" or "7", mail to 405 E 8th Ave #2600, Eugene OR 97401), BOTH: (a) a written response, which states the facts upon which you will rely, AND (b) a certificate showing a COPY of the response was given DIRECTLY TO the Judge, and served on the U.S. Trustee and the party named in pt. 2 above. See [Local Form #541.51](#) for details.

5. On _____ copies of BOTH this notice AND the motion were served pursuant to FRBP 7004 on the debtor(s); any debtor's attorney; any trustee; any trustee's attorney; members of any committee elected pursuant to 11 U.S.C. §705; any Creditors' Committee Chairperson [or, if none serving, on all creditors listed on the list filed pursuant to FRBP 1007(d)]; any Creditors' Committee attorney; the U.S. Trustee; and all affected lien holders whose names and addresses used for service are as follows:

Signature

(If debtor is movant) Debtor's Address & Taxpayer ID#(s) (last 4 digits)

1 Thomas W. Stilley, OSB No. 883167
Timothy A. Solomon, OSB No. 072573
2 SUSSMAN SHANK LLP
1000 SW Broadway, Suite 1400
3 Portland, OR 97205-3089
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5 tsolomon@sussmanshank.com

6 Attorneys for Paul Joe, Debtor-in-Possession
7
8

9 IN THE UNITED STATES BANKRUPTCY COURT
10 DISTRICT OF OREGON

11 In re:) Case No. 12-36345-elp11
12 Joe, Paul,) MOTION FOR ENTRY OF STIPULATED
13 Debtor.) ORDER AUTHORIZING USE OF CASH
14) COLLATERAL
15) **Expedited Hearing Requested**

16 Pursuant to Section 363(c) of Title 11 of the United States Code (the "Bankruptcy
17 Code"), Rule 4001(b) of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy
18 Rules"), and LBR 4001-2, Paul Joe, the Debtor-in-Possession ("DIP") moves this Court
19 for (a) entry of the interim Stipulated Order Authorizing Use of Cash Collateral and
20 Granting Adequate Protection attached hereto as Exhibit 1 (the "Stipulated Order"); and
21 (b) after final hearing held pursuant to Bankruptcy Rule 4001(b)(2), entry of a final order
22 authorizing DIP to use cash collateral during the pendency of his case. In support of its
23 Motion, DIP states as follows:

24 1. The Stipulated Order does not contain any of the provisions listed in the
25 Court's Guidelines Regarding Motions to Use Cash Collateral or to Obtain Credit (Local
26 Form 541.7).

**Page 1 of 4 - MOTION FOR ENTRY OF STIPULATED ORDER AUTHORIZING USE
OF CASH COLLATERAL**

1 **BACKGROUND**

2 2. On August 17, 2012 (the "Petition Date"), DIP filed a voluntary petition for
3 relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code").

4 3. DIP has continued in possession of his property and is continuing to
5 operate and manage his business as debtor in possession pursuant to Sections 1107(a)
6 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this
7 case.

8 4. The Court has jurisdiction over this matter pursuant to 28 USC §§ 157 and
9 1334. Venue is proper in this district pursuant to 28 USC §§ 1408 and 1409. This is a
10 core proceeding pursuant to 28 USC § 157(b)(2)(M).

11 5. DIP borrowed money from Hampton Heights, L.L.C. ("Lender"), DIP's
12 prepetition lender, pursuant to that certain promissory note dated June 17, 2010 from
13 Paul Joe to Hampton Heights, L.L.C. in the original principal amount of \$1,100,000.

14 6. In connection with that loan, DIP executed a Deed of Trust on June 17,
15 2010 (the "Deed of Trust").

16 7. Pursuant to the Deed of Trust, Lender has a lien on the real property
17 owned by DIP (the "Real Property") in the amount of approximately \$1.2 million.

18 8. Lender also asserts that the rents (the "Rents") from Bing's Restaurant,
19 the tenant of the restaurant building located on the Real Property, are Lender's cash
20 collateral ("Cash Collateral") pursuant to the terms of the Deed of Trust.

21 9. DIP's sole source of income is the Rents.

22 10. No party other than the Lender asserts an interest in the Rents.

23 **RELIEF REQUESTED**

24 11. DIP seeks to use a portion of the Cash Collateral pursuant to
25 Sections 105(a) and 363(c)(2) of the Bankruptcy Code and the terms and conditions of
26

**Page 2 of 4 - MOTION FOR ENTRY OF STIPULATED ORDER AUTHORIZING USE
OF CASH COLLATERAL**

1 the Stipulated Order, to pay DIP's continuing operating expenses, including his
2 Chapter 11 administrative expenses.

3 **BASIS FOR RELIEF REQUESTED**

4 12. DIP requires use of Cash Collateral to meet his basic living expenses, to
5 preserve and maintain the assets of the bankruptcy estate, and to pay certain
6 administrative expenses. Without use of such Cash Collateral, DIP will lack sufficient
7 funds to live and to propose and confirm a plan of reorganization in this case.

8 13. DIP seeks to use only a relatively small portion of the Cash Collateral.
9 Specifically, as provided in the Budget attached hereto as Exhibit 2, out of the \$10,100
10 monthly rent payments he receives from Bing's Restaurant, DIP proposes to spend
11 \$2,600 on living expenses, and to deposit the remaining \$7,500 into the DIP bank
12 account as a reserve from which to pay amounts pursuant to DIP's plan of
13 reorganization.

14 14. A debtor in possession may not use cash collateral unless each entity that
15 has an interest in such cash collateral consents. 11 USC § 363(c)(2). Lender consents
16 to the use of cash collateral on the terms set forth herein and in the Stipulated Order.

17 **REQUEST FOR A FINAL HEARING**

18 15. Pursuant to Bankruptcy Rule 4001(b), a final hearing on a request for
19 authority to use Cash Collateral may only be commenced after fourteen (14) days notice
20 for the motion requesting such relief. DIP requests that the Court set a hearing, as soon
21 as possible after the expiration of the 14 day notice, for the Court to consider entering a
22 final order approving DIP's use of cash collateral.

23 **NOTICE**

24 16. DIP has provided notice of this Motion to each of his unsecured creditors,
25 Lender, all creditors requesting special notice, all known secured creditors, the Internal
26 Revenue Service, and the Office of the United States Trustee. No unsecured creditors'

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OF CASH COLLATERAL**

1 committee has been appointed in this case. DIP submits that no other or further notice
2 is required under the circumstances.

3 WHEREFORE, DIP prays that this Court (a) enter the Stipulated Order attached
4 hereto as Exhibit 1; and (b) after final hearing held pursuant to Bankruptcy Rule
5 4001(b)(2), enter a final order authorizing DIP to use the Cash Collateral during the
6 pendency of this case.

7 DATED this 11th day of October, 2012.

8 SUSSMAN SHANK LLP

9 */s/ Timothy A. Solomon*

10 By _____
11 Thomas W. Stilley, OSB No. 883167
12 Timothy A. Solomon, OSB No. 072573
Attorneys for Debtor-in-Possession

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10 IN THE UNITED STATES BANKRUPTCY COURT
11 DISTRICT OF OREGON

12 In re:) Case No. 12-36345-elp11
13 Joe, Paul,)
14 Debtor.) STIPULATED ORDER AUTHORIZING
15) USE OF CASH COLLATERAL AND
16) GRANTING ADEQUATE PROTECTION

17 Paul Joe, the debtor in possession (the "DIP"), and Hampton Heights, L.L.C.
18 ("Lender"), stipulate as follows:

19 A. Commencement of Case. On August 17, 2012 (the "Petition Date"), the
20 DIP filed a voluntary petition for relief with this Court, commencing a case (the
21 "Chapter 11 Case") under chapter 11 of title 11 of the United States Code (the
22 "Bankruptcy Code"). Since the Petition Date, the DIP has continued to manage and
23 operate his property and business as debtor in possession pursuant to sections 1107
24 and 1108 of the Bankruptcy Code.

25 B. Jurisdiction and Venue. This Court has jurisdiction over this proceeding
26

Page 1 of 5 – STIPULATED ORDER AUTHORIZING USE OF CASH COLLATERAL
AND GRANTING ADEQUATE PROTECTION

1 and the parties and properties affected hereby pursuant to 28 USC §§ 157(b) and 1334
2 and this is a core proceeding pursuant to 28 USC § 157(b)(2). Venue for proceeding on
3 this Stipulated Order is proper in this Court pursuant to 28 USC § 1409.

4 C. No Creditors' Committee. To date, the United States Trustee has not
5 appointed a committee pursuant to section 1102(a) of the Bankruptcy Code.

6 D. Prepetition Indebtedness and Security Therefore. The DIP's secured
7 lender is Lender. As of the Petition Date, the amount owed to Lender was
8 approximately \$1.2 million. Lender asserts that its claim against the DIP is secured by a
9 valid, enforceable, and properly perfected security interest in the DIP's real property,
10 and in the rents generated by that property (the "Rents").

11 E. Necessity of Use of Cash Collateral. The DIP is currently unemployed so
12 that the DIP's sole source of income is the Rents, and the DIP asserts that it is
13 necessary for the DIP to use Cash Collateral to meet his basic living expenses, to
14 preserve and maintain the assets of the bankruptcy estate, and to pay certain
15 administrative expenses. Without use of such Cash Collateral, the DIP asserts that he
16 will lack sufficient funds to live and to propose and confirm a plan of reorganization in
17 this case. Use of Cash Collateral is necessary to avoid immediate and irreparable harm
18 to the estate.

19 F. Cause. Entry of this Order will minimize disruption of the DIP's life,
20 preserve the value of the DIP's assets, and is in the best interests of the DIP, his
21 creditors, and his estate.

22 G. Notice. Notice of this Stipulated Order has been given to (a) the Office of
23 the United States Trustee, (b) the Lender, (c) all creditors of the DIP, and (d) all parties
24 requesting special notice pursuant to Bankruptcy Rule 2002. Sufficient and adequate
25 notice of the hearing and the relief requested has been given pursuant to all applicable
26 provisions of the Bankruptcy Code and the Bankruptcy Rules, including, without

Page 2 of 5 – STIPULATED ORDER AUTHORIZING USE OF CASH COLLATERAL
AND GRANTING ADEQUATE PROTECTION

1 limitation, Section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002 and
2 4001.

3 **NOW THEREFORE**, the Court being fully advised in the premises, it is hereby
4 ORDERED as follows:

5 1. The DIP is authorized to use Cash Collateral in accordance with the terms
6 of this Order to pay costs and expenses incurred by the DIP in the ordinary course, until
7 November 30, 2012.
8

9 2. The DIP's authority to spend Cash Collateral is limited to the sum of
10 \$2,600 per month. All excess Cash Collateral shall be deposited into the DIP bank
11 account and held pending further Order of this Court.

12 3. As adequate protection for any Cash Collateral used by the DIP, the
13 Lender is hereby granted, pursuant to sections 361(1) and 363(e) of the Bankruptcy
14 Code, a perfected lien or liens (the "Replacement Liens") in the postpetition Rents,
15 receipts, and other income generated from operation of the DIP's real property in which
16 the Lender holds pre-petition liens and security interests, with the same priority as
17 existed in such prepetition liens and security interests as of the Petition Date. These
18 security interests are granted to the Lender for the sole purpose of providing adequate
19 protection to the Lender to protect its allowed secured claim on the Petition Date and
20 are not intended, nor shall they be deemed, to improve the collateral position of the
21 Lender as of the Petition Date.
22

23 4. The Replacement Liens granted by this Order shall be deemed perfected
24 and enforceable by operation of law upon execution and entry of this Order by the Court
25 without regard to whether such security interests and liens are perfected under
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AND GRANTING ADEQUATE PROTECTION

1 applicable non-Bankruptcy law.

2 5. Nothing in this Order shall be construed to (a) prejudice a right of any
3 party in interest (including the DIP) to contest the validity, priority, or extent of the liens
4 or security interests of any party in any prepetition collateral or the proceeds thereof; (b)
5 convert any prepetition obligations into post-petition obligations; (c) require payment of
6 any obligations on confirmation of a plan of reorganization; (d) alter, improve, limit, or
7 impair the rights, if any, of parties claiming to have rights of reclamation or statutory lien
8 rights against the DIP or his assets; or (e) enhance the secured position of any creditor
9 as of the Petition Date.
10

11 6. The DIP's authority to use cash collateral may be extended beyond
12 November 30, 2012 by mutual agreement of the DIP and the Lender. In the event of
13 such agreement, the DIP may submit a further order allowing the use of Cash Collateral
14 on substantially similar terms without an additional motion or hearing, provided the
15 terms of any future proposed order are first served on the United States Trustee, the top
16 twenty Unsecured Creditors (or the Unsecured Creditor's Committee if one is
17 appointed), and anyone requesting special notice, within 3 business days prior to its
18 submission to the court with an opportunity to object and request a hearing.
19
20

21 7. This Order, and each of its terms, shall be effective immediately upon
22 entry by the Court and the automatic stay of judgment provisions of Bankruptcy Rule
23 8017(a) shall not apply.
24

25 # # #
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AND GRANTING ADEQUATE PROTECTION

1 IT IS SO STIPULATED:

2 SUSSMAN SHANK LLP

3 */s/ Timothy A. Solomon*

4 _____
5 Thomas W. Stilley, OSB No. 883167
6 Timothy A. Solomon, OSB No. 072573
7 Attorneys for the DIP

8 FOLAWN ALTERMAN & RICHARDSON LLP

9 */s/ Courtney C. Dippel*

10 _____
11 Courtney C. Dippel, OSB No. 022916
12 Attorneys for Lender

13 PRESENTED BY:

14 SUSSMAN SHANK LLP

15 */s/ Timothy A. Solomon*

16 _____
17 Thomas W. Stilley, OSB No. 883167
18 Timothy A. Solomon, OSB No. 072573
19 Attorneys for the DIP

20 c: ECF Participants
21 Interested Parties

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AND GRANTING ADEQUATE PROTECTION

CASH COLLATERAL BUDGET -- SEPTEMBER - NOVEMBER 2012

	<u>SEPT</u>	<u>OCT</u>	<u>NOV</u>
RENT PAYMENT	\$ 10,100.00	\$10,100.00	\$10,100.00
EXPENSES			
Living Expenses	\$ (2,600.00)	\$ (2,275.00)	\$ (2,600.00)
Trustee Fees	\$ -	\$ (325.00)	\$ -
Remaining cash to be deposited in DIP account	\$ 7,500.00	\$ 7,500.00	\$ 7,500.00